IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 93 OF 1991
IN
FIRST APPEAL NO. 231 OF 1975

Bhikoba Appaji Salunkhe,
since deceased by heirs :-
Sarswati Bhikoba Salunkhe & Ors. ...Appellants
V/s.
Nandkumar Shivling Sagare & Ors. ...Respondents

Ms.Amita Kuthy Unnikrishnan i/b. M/s.Nitin Pradhan &
S.D. Khot for the Appellants.
Mr.S.B. Shetye for Respondent Nos.1 to 6.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATED : NOVEMBER 28, 2007

P.C. :-

1. By this appeal, the appellants who are the legal representatives of the original defendant no.9 challenge the judgment dated 6.2.90 passed by the learned Single Judge of this Court in First Appeal No.231 of 1975. By that order, the learned Single Judge has reversed the judgment and decree passed by the Civil Judge, Senior Division, Satara, in Special Civil Suit No.7 of 1968 dated 30th June, 1973. The plaintiff no.1 Nandkumar and plaintiff no.2 Vishwas had filed the suit through their next friend on 24th February, 1968 against their father

for partition and possession of their 1/3rd share in the suit properties described in Exhibit-A to the plaint. It appears that a part of the property in which the plaintiffs claimed share was transferred by their father who was defendant no.1 in favour of original defendant no.9. In this Letters Patent Appeal, we are concerned only with that transaction, therefore, we are restricting the narration of facts in relation to that transaction between the defendant no.1 and defendant no.9 only.

2. Agricultural land was sold for a consideration of Rs.18,000/- by Sale Deed dated 11th June, 1966. The trial Court found that the land was sold for Rs.18,000/- for legal necessity because according to the trial court, Rs.7,000/- was required by defendant no.1 for repayment of the loan of the Land Development Bank and Rs.10,000/- was required by him because he had to file a suit for reconveyance of the house belonging to the family which was sold by him with a provision for reconveyance and therefore, the trial court held that the sale was for legal necessity. In the appeal, the

learned Single Judge of this Court found that the sale cannot be for legal necessity. The learned Single Judge found that out of the amount of Rs.18,000/-, only Rs.7,000/- could be said to be needed for legal necessity. The balance of the amount was not needed for any legal necessity. The learned Single Judge found that the trial Court was not justified in holding that Rs.10,000/- was required to be retained by defendant no.1 for legal necessity in relation to the reconveyance of the house because the learned Single Judge held that the house was conveyed in the year 1961 with the provision for reconveyance for repayment of two debts which were incurred by defendant no.1 and there is no evidence on record to show that those two debts were incurred for any legal necessity. The learned Single Judge, therefore, held that the sale of the land in favour of the defendant no.9 was invalid and therefore, passed decree accordingly. The learned Single Judge, however, directed the plaintiffs to repay the amount of Rs.7,000/- which was for legal necessity to the defendant no.9 but no interest was allowed on that amount.

3. The learned Counsel appearing for the appellants submits that it was the duty of the defendant no.9 who was the purchaser to hold inquiry to find out whether the sale by defendant no.1 was in fact for legal necessity. That inquiry was made by defendant no.9 and defendant no.15. The defendant no.9 informed that the money was required by the defendant no.1 for repaying the loan of Land Development Bank and also for repurchase of the house. The learned Counsel, therefore, submits that the finding recorded by the learned Single Judge that there is no evidence on record to justify the finding that the entire land was sold for legal necessity, is not correct.

4. We have heard the learned for the respondents. We have also gone through the record. We find that there is no difference of opinion between the trial court and the learned Single Judge that out of the amount of Rs.18,000/- received from defendant no.9, Rs.7,000/- has been used for repaying the loan of Land Development Bank. The whole controversy is about the

balance of the amount. The trial court held that the money was required for the purpose of reconveyance of the house. The trial Court, however, did not address himself to the question whether the debts for the repayment for which the house was reconveyed in 1961 were incurred for legal necessity or not. In the order, learned Single Judge has considered that aspect of the matter and has observed that when there is no evidence on record to show that the two debts for the repayment of which the house was sold in 1961, were incurred for legal necessity. On the contrary, the learned Single Judge has found that there is evidence on record to show that defendant no.1 had kept mistress and he was indulging in gambling and the debts were incurred by him for that purpose.

5. We find from the judgment of the learned Single Judge that the learned Judge has considered the entire material on record. In fact, it is not the complaint of the appellants that the learned Single Judge has excluded from consideration any material or relevant aspect of the matter. Therefore, we do not see any

illegality committed by the learned Single Judge except that we find that there is substantial force in the submission of the appellants that, in any case, the learned Single Judge should have allowed interest on the amount of Rs.7000/- in exercise of his powers under Section 34 of the CPC. We have heard the learned Counsel for the plaintiffs on this aspect of the matter. In our opinion, as the learned Single Judge has found that an amount of Rs.7000/- is refundable by the plaintiffs to the original defendant no.9 though it is true that the original defendant no.9 had land in his possession and therefore, was getting income from the land, interest should have been allowed on the amount.

6. In our opinion, it would be appropriate to direct the plaintiffs to pay interest at the rate of 9% per annum on the amount of Rs.7000/- which is directed to be refunded by the order of the learned Single Judge from the date of the institution of the suit till the date of realisation. It is accordingly so ordered. Save and except this modification, order passed by the learned Single Judge is confirmed.

. Appeal is disposed of.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)